IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT:

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.7892 of 2004

Between:

M/s. Dundlod Overseas

4-1-1229, Boggulkunta, Hyderabad - 500 001.
Rep. by its Proprietor Manoj Kanodia

..... PETITIONER

AND

1) The Deputy Commissioner of Customs,

Inland Container Depot, Sanath Nagar, Hyderabad.

2) The Commissioner of Customs & Central Excise(Appeals),
Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.

3) The Joint Secretary to Government of India,

Ministry of Finance, Department of Revenue,
4th Floor, Jeevan Deep Building, Sansad Marg,
Parliament Street, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus: i) declaring the Order of Respondent No.3, dated 20-01-2004 and the Orders of the Respondent No.2, dated 30-10-2002 and the orders of the Respondent No.1, dated
21-02-2002, as arbitrary, illegal, violative of the Articles 14, 21 and 300A of the Constitution of India, without Jurisdiction and be pleased to set aside the same.

Counsel for the Petitioner: Sri A. Sudarshan Reddy

Counsel for the Respondents: Sri A. Rajashekar Reddy
Asst. Solicitor General

The Court at the admission stage made the following :

ORDER:(Per Hon'ble Sri Justice B. Sudershan Reddy)

This writ petition is directed against the order passed by the 2nd respondent, dated 30-10-2002, dismissing the appeal preferred by the petitioner on the ground that there is a delay of 67 days in preferring the appeal which according to the appellate authority is beyond the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962 (for Short 'the Act'). The appeal preferred by the petitioner against the Order-in-Original No.4/2002, dated 21-02-2002, has been accordingly rejected as time barred without going into the merits of the case.

In the affidavit filed in support of this writ petition, it is stated that the petitioner received the order, dated
21-02-2002, passed by the 1st respondent only on
01-07-2002 and the appeal was filed on 05-07-2002.
The contention of the petitioner is that the appeal preferred by him before the 2nd respondent, appellate authority, is within limitation from the date of communication of the order to him. Section 128 of the Act provides Appeals to

Commissioner (Appeals). It says that any person aggrieved by any decision or order passed under the Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision order.

The specific case of the petitioner in this writ petition is that the order has been received only on 01-07-2002.

In order to verify as to whether the order, dated 21-02-2002, communicated and received by the petitioner only on 01-07-2002 as alleged in the affidavit filed in support of the writ petition, we have summoned the record and perused the same. The record does not disclose as to on what date the order has been communicated and served upon the petitioner. No acknowledgement is available in the record.

Learned Assistant Solicitor General appearing on behalf of the respondents, however, contends that the order, dated 21-02-2002, was dispatched on 25-02-2002, and therefore, there is a presumption that the order must have been communicated to the petitioner within the reasonable time and therefore the contention of the petitioner that the order was served on him only on 01-07-2002 should be rejected.

We are not impressed by the contention of the learned Assistant Solicitor General since the same is not supported by the record. Section 128 of the Act does not say that the appeal is required to be preferred within 60 days from the date of passing of the order. On the other hand, it clearly says that the aggrieved person is entitled to prefer appeal within 60 days from the date of communication of such decision or order to him.

On the facts and circumstances of the case, we are of the considered opinion that the appeal preferred by the petitioner before the 2nd respondent is

not barred by limitation. The impugned order is accordingly set aside.
The appellate authority shall number the appeal and dispose of the same, in accordance with law.

Suffice it to observe, we have not expressed any opinion whatsoever and the appeal is required to be disposed of on its own merits, as expeditiously as possible, preferably within four months from the date of receipt of the copy of this order

Accordingly, the Writ Petition is allowed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:25-04-2005.

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C.V. RAMULU, J

PV

To

1) The Deputy Commissioner of Customs,

Inland Container Depot, Sanath Nagar, Hyderabad.

2) The Commissioner of Customs & Central Excise(Appeals),
Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.

3) The Joint Secretary to Government of India,

Ministry of Finance, Department of Revenue,
4th Floor, Jeevan Deep Building, Sansad Marg,
Parliament Street, New Delhi.

4) Two C.Cs. to the Assistant Solicitor General,
High Court of A.P., Hyderabad, (O.U.T.).

5) Two C.D. copies.